UNITED STATES PATENT AND TRADEMARK OFFICE

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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

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Ex parte LARRY S. YAEGER, RICHARD W. FABRICK, II,
and GIULIA M. PAGALLO

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Appeal 2008-3225
Application 09/520,206
Technology Center 2600

———————

Decided: September 26, 2008

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Before KENNETH W. HAIRSTON, JOHN A. JEFFERY, and MARC S.
HOFF, *Administrative Patent Judges.*

JEFFERY, *Administrative Patent Judge.*

DECISION ON APPEAL

    Appellants appeal under 35 U.S.C. § 134 from the Examiner's

rejection of claims 1, 2, 4-18, 20-29, and 31-47. We have jurisdiction under

35 U.S.C. § 6(b). We AFFIRM-IN-PART.

STATEMENT OF THE CASE

Appellants invented a system, a method, and computer readable medium for managing ink strokes in a computer system having a pen-based input tablet. The system, method, and medium include detecting an ink phrase termination event determined by various tests. The system, method, and medium also associates a reference context with unrecognized ink strokes in order to identify ink data more accurately.[1] Independent claim 1 is reproduced below:

1. A system for managing ink information in a computer system having a pen-based input tablet, the system comprising:

a pen driver coupled to the pen-based input/display tablet and configured to collect and organize the ink information entered at the pen-based input tablet into ink strokes;

an ink memory area organized into one or more ink phrase data structures; and an ink manager coupled to the pen driver for receiving the ink strokes, the ink manager having an ink phrase termination engine configured to examine the ink information collected by the pen driver and, upon detecting the occurrence of an ink phrase termination event, to identify a respective end of an ink phrase to the ink manager,

whereby the ink information entered at the pen-based input tablet is associated with a client application, and

the ink manager stores the ink strokes received prior to the ink phrase termination event in a selected ink phrase data structure and, in response to receiving from the client application a reference context affiliated with the un-recognized ink strokes of the ink phrase, associates the reference context with the ink strokes.

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[1] *See generally* Spec. 3:26-5:20, 8:3-10:20, 11:10-22, and 12:16-15:27

The Examiner relies upon the following as evidence in support of the rejection:

Altman   US 5,517,578   May 14, 1996

Beernink   US 5,682,439   Oct. 28, 1997

Claims 1, 2, 4-18, 20-29, and 31-47 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Altman and Beernink.

Rather than repeat the arguments of Appellants or the Examiner, we refer to the Briefs[2] and the Answer[3] for their respective details. In this decision, we have considered only those arguments actually made by Appellants. Arguments which Appellants could have made but did not make in the Briefs have not been considered and are deemed to be waived. *See* 37 C.F.R. § 41.37(c)(1)(vii).

Appellants present arguments for the following claim groupings: (1) claims 1, 16, 27, 37, and 42; (2) claims 2, 18, and 28; (3) claims 4, 20, and 31; and (4) claims 33 and 47. Appellants, nonetheless, separately argue some of the claims within the above groups. Claims 5-15, 17, 21-26, 29, 32, 34-36, 38-41, and 43-46, however, have not been discussed (App. Br. 6-20). We, therefore, treat the claims as follows: (1) claim 1; (2) claims 2 and 5-15; (3) claims 4, 20, and 31; (4) claims 16, 17, and 21-26; (5) claim 18; (6) claims 27, 32, and 34-36; (7) claims 28 and 29; (8) claim 33; (9) claims 37-41; (10) claims 42-46; and (11) claim 47.

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[2] We refer to the most recent Appeal Brief filed August 2, 2007, and the most recent Reply Brief filed November 15, 2007, throughout this opinion.
[3] We refer to the most recent Examiner's Answer mailed October 29, 2007, throughout this opinion.

Claim 1

We first turn the rejection of independent claim 1 under 35 U.S.C. § 103(a) as being unpatentable over Altman and Beernick. The Examiner finds that the combination of Altman and Beernink teaches all the recited elements (Ans. 3-5). Appellants argue that: (1) Altman does not teach the limitation of an ink phrase termination engine that detects an ink phrase termination event and (2) the associated reference context in Beernink (a) is not in response to receiving a reference context from a client application and (b) is not affiliated with unrecognized ink strokes (App. Br. 7-13; Reply Br. 2-4).

ISSUES

The following issues have been raised in the present appeal:

(1)   Whether Appellants have shown that the Examiner erred in finding that Altman discloses "the ink manager having an ink phrase termination engine configured . . . , upon detecting the occurrence of an ink phrase termination event, to identify a respective end of an ink phrase to the ink manager" as recited in claim 1.

(2)   Whether Appellants have shown that the Examiner erred in finding that Beernink teaches associating a reference context with unrecognized ink strokes in response to receiving from the client application a reference context affiliated with the unrecognized ink strokes.

FINDINGS OF FACT

The record supports the following findings of fact (FF) by a preponderance of the evidence.

1. The Specification describes four tests for detecting an ink phrase termination event. They include: (1) the "time-out" test; (2) the "out of proximity" test; (3) the "out of area" test; and (4) the "recognition hard-break" test (Spec. 12:27-14:15).

2. One specific example in the Specification of a "recognition hard-break" test that detects an ink phrase termination event includes detecting when the ink strokes are located on a new or different line (Spec. 14:6-9).

3. The Specification states that "an ink phrase is terminated upon the occurrence of *any* such event" (emphasis added) detected during one of the ink phrase termination tests (Spec. 14:16-18).

4. Altman has the ability to identify ink strokes by line. A line is defined by the area between two displayed lines on the screen (Altman, col. 6, ll. 27-31).

5. Altman discloses a method for processing the ink information using an engine that identifies a line change at 61 (Altman, col. 5, ll. 32-34, col. 6, ll. 23-31, 53-57; Fig. 3).

6. Beernink discloses an example of an application or pop up window 180 with a reference context 164 or selected word, "tasty," and associates the selected word with the application 180 (Beernink, col. 12, ll. 60-62; Fig. 11).

7. Beernink additionally teaches that when the selected word has not been processed, the user is provided with the option to select a recognize button 290, and the strokes remain unrecognized until the user selects button 290 (Beernink, col. 12, l. 60 – col. 13, l. 6; Fig. 11).

8. Altman discloses the ink information is stored in a data structure or memory 18 (Altman, col. 3, l. 57 and col. 4, ll. 15-17; Fig. 1).

9. Beernink disclose the ink information is stored in a data structure or memory 14 (Beernink, col. 5, ll. 30-46; Fig. 1).

10. Beernink discloses an embodiment that, once a word representation is entered on the tablet, the application will, in turn, process the selected word (Beernink, col. 10, ll. 8-15; Fig. 4).

11. The Figure 11 embodiment in Beernink operates similar to the Figure 4 embodiment when processing a selected word (Beernink, col. 12, l. 60 – col. 13, l. 6; Fig. 11).

PRINCIPLES OF LAW

Discussing the question of obviousness of a patent that claims a combination of known elements, *KSR Int'l v. Teleflex, Inc.*, 127 S. Ct. 1727 (2007), explains:

> When a work is available in one field of endeavor, design incentives and other market forces can prompt variations of it, either in the same field or a different one. If a person of ordinary skill can implement a predictable variation, § 103 likely bars its patentability. For the same reason, if a technique has been used to improve one device, and a person of ordinary skill in the art would recognize that it would improve similar devices in the same way, using the technique is obvious unless its actual application is beyond his or her skill. *Sakraida* [*v. AG Pro, Inc.*, 425 U.S. 273 (1976)] and *Anderson's-Black Rock*[*, Inc. v. Pavement Salvage Co.*, 396 U.S. 57 (1969)] are illustrative—a court must ask whether the improvement is more than the predictable use of prior art elements according to their established functions.

KSR, 127 S. Ct. at 1740.

If the Examiner's burden is met, the burden then shifts to the
Appellants to overcome the prima facie case with argument and/or evidence.
Obviousness is then determined on the basis of the evidence as a whole and
the relative persuasiveness of the arguments. *See In re Oetiker*, 977 F.2d
1443, 1445 (Fed. Cir. 1992).

ANALYSIS

Claim 1

Appellants first argue that Altman does not teach the limitation of an
ink phrase termination engine that detects an ink phrase termination event
(App. Br. 7-11; Reply Br. 2-3). Specifically, Appellants contend that
Altman discloses "the ink strokes are organized (not into phrases), but into
lines" (App. Br. 7) and "one of the objects of Altman is to segregate ink
strokes into lines" (App. Br. 8). While we agree that Altman organizes the
ink strokes into lines and thus detects changes in lines, we find that detecting
a line change is also detecting the occurrence of an ink phrase termination
event.

The Specification describes four tests used to detect an ink phrase
termination event and to notify the ink manager. They include (1) the "time-
out" test; (2) the "out of proximity" test; (3) the "out of area" test; and (4)
the "recognition hard-break" test (FF 1). One specific example in the
Specification of a "recognition hard-break" test that detects an ink phrase
termination event includes detecting when the ink strokes are located on a
new or different line (FF 2). The Specification also states that "an ink
phrase is terminated upon the occurrence of *any* such event" (emphasis
added) (FF 3) and thus, includes the example of an ink phrase terminating

when the ink strokes are located on a different line (FF 2). Similarly, Altman also has the ability to identify ink strokes by line and defines a line by the area between two displayed lines on the screen (FF 4). This is analogous to the "recognition hard-break" test (FF 1). Altman further discloses a method for processing this information using an engine that identifies a line change at 61 or an ink phrase termination event (FF 5). Thus, while Altman does not use the word "phrase" (App. Br. 8), Altman identifies or detects the occurrence of an ink phrase termination event.

Appellants also argue that Altman does not disclose or teach an ink phrase termination engine because Altman does not detect ink stokes belonging to a particular phrase (App. Br. 8). As discussed above, Altman discloses detecting line changes or ink strokes belonging to a particular line. Using this example in the Specification as an illustration that detecting a line change also detects ink strokes belonging to a particular phrase, Altman similarly detects ink strokes belonging to a particular phrase, just like Appellants' example of detecting a line change or when one phrase is out of the area of another (FF 1-3). We, therefore, find that Altman discloses an ink phrase termination engine configured to examine the ink information and detect the occurrence of an ink phrase termination event as recited in claim 1.

Appellants next contend that Beernink does not teach an ink manager that, "in response to receiving from the client application a reference context affiliated with the un-recognized ink strokes of the ink phrase, associates the reference context with the ink strokes" as recited in claim 1 (App. Br. 10-12; Reply Br. 3-4). Specifically, Appellants contend that the reference context in Beernink is not received from the client application, but rather that the

window is generated by handwriting recognition software (App. Br. 10) and that the strokes of Beernink are already recognized (App. Br. 10-12). Beernink discloses an example of a client or pop up window application 180 with a reference context 164 or selected word, "tasty" (FF 6). In this example, Beernink associates the selected word with the application 180 so that the user can be provided with the option to select a recognize button 290 (FF 6-7). Beernink additionally teaches that the selected word has *not* been processed and is, therefore, *unrecognized* until the user selects button 290 (FF 7). Thus, we find that Beernink does teach the reference context is received from a client application and the reference context is affiliated with unrecognized ink strokes.

Lastly, Appellants nominally argue that Altman does not teach or suggest the storing of ink information in a selected ink phrase data structure (App. Br. 12). Apart from merely asserting that this limitation is not found in Altman, Appellants do not specifically address the Examiner's positions articulated in the Answer (Ans. 4) or explain why these positions are deficient. In any event, such conclusory statements fall well short of rebutting the Examiner's rejection under obviousness. Furthermore, both Altman and Beernink disclose the ink information is stored in a data structure (FF 8-9), and Appellants have not presented any evidence that rebuts the Examiner's prima facie case of obviousness. We therefore find that the combination of Altman and Beernink teaches "an ink manager . . . , in response to receiving from the client application a reference context affiliated with the un-recognized ink strokes of the ink phrase, associates the reference context with the ink strokes" as recited in claim 1.

For the above reasons, Appellants have not shown the Examiner erred in rejecting claim 1 under 35 U.S.C. § 103(a) based on the collective teachings of Altman and Beernink.

Claims 2 and 5-15

Representative claim 2[4] recites the ink manager, in response to an ink termination event, is configured to pass the unrecognized ink strokes of the ink phrase to the client application. The Examiner finds that the combination of Altman and Beernink teaches all the recited elements (Ans. 5). Appellants repeat the arguments made with respect to claim 1 related to Beernink failing to disclose passing unrecognized ink strokes of the ink phrase to the client application. We are not persuaded by these arguments, however, for the reasons previously discussed in connection with claim 1. Additionally, Beernink shows the unrecognized ink strokes (i.e., "tasty") of the ink phrase (i.e., "tasty feature") are passed to client application 180 when the phrase has been completed or detected in order to provide the user with the option to recognize the ink strokes at 290 (FF 6).

Appellants also dispute that Beernink discloses the passing of the strokes is in response to the occurrence of an ink phrase termination event (App. Br. 17). Beernink discloses an embodiment in which, once a word representation is entered on the tablet, the application will, in turn or after a given time (e.g., "time out" test), process the selected word (Beernink, col. 10, ll. 8-15; Fig. 4). The Figure 11 embodiment in Beernink operates

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[4] Claims 5-15 depend from claim 2 and have not been argued with any particularity. *See* App. Br. 16-17. Accordingly, we group claims 5-15 with claim 2, and select claim 2 as representative. 37 C.F.R. § 41.37(c)(1)(vii).

similarly to process a selected word (Beernink, col. 12, l. 60 – col. 13, l. 6; Fig. 1). This application 180 passes the selected word to application 180 after a given time to provide the user the option to recognize the word. We, therefore, find that Beernink does pass the unrecognized strokes to the client application in response to an ink phrase termination event as recited in claim 2.

For the above reasons, Appellants have not shown that the Examiner erred in determining that Altman and Beernink teach the limitations of claim 2. Accordingly, we sustain the rejection of claim 2 and claims 5-15 which fall with claim 2.

Claims 4, 20, and 31

Claim 4 recites the ink manager associates the reference context with the unrecognized ink strokes by appending the reference context to the selected ink phrase data structure. The Examiner finds that the combination of Altman and Beernink teaches all the recited elements (Ans. 5). Appellants contend that the teaching in Beernink to provide alternate hypotheses in step 262 does not suggest appending a reference context to the unrecognized ink strokes of the selected phrase (App. Br. 18). We agree with Appellants.

Altman discloses the ink strokes are stored in memory or memory block data structure (FF 8). Beernink teaches memory for storing strokes (FF 9) and associating a reference context or "tasty" with unrecognized strokes (FF 6). However, neither Altman nor Beernink discloses, teaches, or suggests that the association of the unrecognized ink strokes involves appending the reference context to the selected ink data structure in which

the ink strokes are stored. That is, while Beernink teaches and suggests that the reference context is affiliated with the unrecognized ink strokes and is associated with the ink strokes (FF 6-7), there is no teaching found in these references to actually append the context to the same data structure as the ink strokes. Moreover, the prior art does not provide sufficient reason why one skilled in the art would have recognized the benefits of appending the reference context to the data structure as claimed.

For the above reasons, Appellants have shown error in the Examiner's rejection of claim 4 as being unpatentable over Altman and Beernink. Because claims 20 and 31 are commensurate in scope with claim 4, Appellants have also shown error in the Examiner rejecting claims 20 and 31. Accordingly, we will not sustain the rejection of claims 4, 20, and 31.

Claims 16, 17, and 21-26

Representative independent claim 16[5] recites a method for managing ink information in a computer system having a tablet including the steps of organizing the ink strokes into one or more ink phrases as defined by one or more ink phrase termination events and in response to receiving a reference context from a client application affiliated with the unrecognized ink strokes of the ink phrase, associating the reference context with the ink strokes. The Examiner finds that the combination of Altman and Beernink teaches all the recited elements (Ans. 9). Appellants repeat the arguments made with respect to claim 1 related to Altman grouping ink strokes in terms of lines

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[5] Claims 17 and 21-26 depend from claim 16 and have not been argued with any particularity (App. Br. 13-14). We therefore treat claims 16, 17, and 21-26 as a group, and select independent claim 16 as representative. 37 C.F.R. § 41.37(c)(1)(vii).

and not ink phrases based on ink phrase termination events (App. Br. 13-14). We are not persuaded by these arguments, however, for the reasons previously discussed in connection with claim 1.

For the above reasons, Appellants have not shown the Examiner erred in rejecting claim 16 based on the collective teachings of Altman and Beernink. Accordingly, we sustain the rejection of claim 16 and claims 17 and 21-26 which fall with claim 16.

Claim 18

Claim 18 depends from claim 16 and further recites the step of passing the unrecognized ink strokes to the client application in response to an ink phrase termination event. The Examiner finds that the combination of Altman and Beernink teaches all the recited elements (Ans. 9). Appellants merely assert that Beernink does not teach an ink manager that passes unrecognized ink strokes to a client application in response to a termination event (App. Br. 17-18). We are not persuaded by these arguments, however, for the reasons previously discussed in connection with claim 2.

For the above reasons, Appellants have not shown the Examiner erred in rejecting claim 18 based on the collective teachings of Altman and Beernink.

Claims 27, 32, and 34-36

Representative independent claim 27[6] recites a computer readable medium containing program instructions for examining the ink information to determine whether an ink phrase termination event has occurred and, in response to receiving a reference context from the client application affiliated with unrecognized ink strokes, associating the reference context with the ink strokes. The Examiner finds that the combination of Altman and Beernink teaches all the recited elements (Ans. 10). Appellants recite some of the limitations of claim 27 and refer to what the Final Office Action mailed June 29, 2006, states (App. Br. 14). We do not consider the mere reference to the Final Office Action an argument, let alone an argument that persuasively rebuts the Examiner's prima facie case of obviousness. Additionally, a statement that merely points out what a claim recites is not an argument for separate patentability of the claim. *See* 37 C.F.R. § 41.37(c)(1)(vii). Because claim 27 is under the same heading as claim 1 (App. Br. 6), we also refer to our previous discussions of claim 1 and, hereby, incorporate those discussions by reference.

For the foregoing reasons, Appellants have not shown the Examiner erred in rejecting claim 27 under 35 U.S.C. § 103(a) based on the collective teachings of Altman and Beernink and claims 32 and 34-36 which fall with claim 27.

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[6] Claims 32 and 34-36 depend from claim 27 and have not been argued with any particularity (App. Br. 7-13). Accordingly, we treat claims 27, 32, and 34-36 as a group, and select independent claim 27 as representative. 37 C.F.R. § 41.37(c)(1)(vii).

Claims 28 and 29

Representative claim 28[7] depends from claim 27 and further recites the computer program instructions for passing the unrecognized ink strokes to the client application in response to an ink phrase termination event. The Examiner finds that the combination of Altman and Beernink teaches all the recited elements (Ans. 10). Appellants merely assert that Beernink does not teach an ink manager that passes unrecognized ink strokes to a client application in response to a termination event (App. Br. 17-18). We are not persuaded by these arguments, however, for the reasons previously discussed in connection with claim 2.

For the above reasons, Appellants have not shown the Examiner erred in rejecting claim 28 based on the collective teachings of Altman and Beernink and claim 29 which falls with claim 28.

Claim 33

Claim 33 depends from claim 32 and recites the computer readable medium has instructions to generate *one or* more recognition hypotheses for the ink strokes of the ink phrase data structure and return the reference context to the client application along with the one or more recognition hypotheses in response to a request from the client application. The Examiner finds that the combination of Altman and Beernink teaches all the recited elements (Ans. 10). Appellants argue that neither Altman nor

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[7] Claim 29 depends from claim 28 and has not been argued with any particularity (App. Br. 17-18). Accordingly, we treat claims 28 and 29 as a group, and select claim 28 as representative. 37 C.F.R. § 41.37(c)(1)(vii).

Beernink discloses the reference context and one or more hypotheses are returned to the client application (App. Br. 19-20).

As discussed above with respect to claim 1, Beernink teaches a client application 180 with a reference context or selected word, "tasty" (FF 6). In return, a single or one hypothesis is displayed, and the application provides a hypothesis for the user to acknowledge or recognize (FF 6-7). Additionally, the act of recognizing "tasty" is considered a hypothesis.

For the above reasons, Appellants have not shown the Examiner erred in rejecting claim 33 based on the collective teachings of Altman and Beernink.

Claims 37-41

Representative independent claim 37[8] recites a method for managing ink information comprising an ink phrase is defined by an occurrence of one or more ink phrase termination events and in response to receiving a reference context from a client application affiliated with unrecognized ink strokes, associating the reference context with the unrecognized ink phrase. The Examiner finds that the combination of Altman and Beernink teaches all the recited elements (Ans. 11). Appellants recite some of the limitations of claim 37 and refer to what the Final Office Action mailed June 29, 2006, states (App. Br. 15). As we indicated previously, we do not consider the reference to the Final Office Action an argument, let alone an argument that persuasively rebuts the Examiner's prima facie case of obviousness.

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[8] Claims 38-41 depend from claim 37 and have not been argued with any particularity (App. Br. 7-13). Accordingly, we treat claims 38-41 as a group, and select independent claim 37 as representative. 37 C.F.R. § 41.37(c)(1)(vii).

Additionally, a statement that merely points out what a claim recites is not an argument for separate patentability of the claim. *See* 37 C.F.R. § 41.37(c)(1)(vii). Because claim 37 is under the same heading as claim 1 (App. Br. 6), we also refer to our previous discussions of claim 1 and hereby incorporate those discussions by reference.

For the foregoing reasons, Appellants have not shown the Examiner erred in rejecting claim 37 under 35 U.S.C. § 103(a) based on the collective teachings of Altman and Beernink and claims 38-41 which fall with claim 37.

Claims 42-46

Representative independent claim 42[9] recites a computer readable medium having instructions for examining the ink information to determine whether an ink phrase termination event has occurred and, in response to receiving a reference context for the client application affiliated with the unrecognized ink phrase, associating the reference context with the un-recognized ink phrase. The Examiner finds that the combination of Altman and Beernink teaches all the recited elements (Ans. 11). Appellants repeat the arguments made with respect to claim 1 (App. Br. 16). We are not persuaded by these arguments, however, for the reasons previously discussed in connection with claim 1. Additionally, the arguments that the prior art fails to teach or suggest detecting the occurrence of ink phrase

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[9] Claims 43-46 depend from claim 42 and have not been argued with any particularity (App. Br. 15-16). Accordingly, we treat claims 42-46 as a group, and select independent claim 42 as representative. 37 C.F.R. § 41.37(c)(1)(vii).

termination events and organizing ink strokes into ink phrases (App. Br. 16) are not commensurate with the scope of claim 42 and will not be further addressed.

For the above reasons, Appellants have not shown the Examiner erred in rejecting claim 42 based on the collective teachings of Altman and Beernink. Accordingly, we sustain the rejection of claim 42 and claims 43-46 which fall with claim 42.

Claim 47

Claim 47 depends from claim 42 and further recites the computer program instructions for returning the reference context to the client application along with one or more hypotheses in response to a request form the client application. The Examiner finds that the combination of Altman and Beernink teaches all the recited elements (Ans. 11). Appellants present the same argument as claim 33 (App. Br. 19-20). We are not persuaded by these arguments, however, for the reasons previously discussed in connection with claim 33.

For the above reasons, Appellants have not shown the Examiner erred in rejecting claim 47 based on the collective teachings of Altman and Beernink.

CONCLUSION

(1) Appellants have not shown that the Examiner erred in finding that Altman discloses an ink manager that detects an ink phrase termination event and identifies an end of an ink phrase to the ink manager.

(2) Neither have Appellants shown that the Examiner erred in finding that Beernink teaches associating a reference context with unrecognized ink strokes in response to receiving from the client application a reference context affiliated with the unrecognized ink strokes.

(3) Appellants, however, have shown the Examiner erred in finding the combination of Altman and Beernink teach the ink manager associates a reference context with unrecognized ink strokes by appending the reference context to the selected ink phrase data structure in which the ink strokes are stored.

DECISION

We have sustained the Examiner's rejection of claims 1, 2, 5-18, 21-29, and 32-47, and we have reversed the Examiner's prior art rejections with respect to claims 4, 20, and 31. Accordingly, the Examiner's rejection of claims 1, 2, 4-18, 20-29, and 31-47 is affirmed-in-part.

No period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED-IN-PART

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